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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 731 and 732

RAYMOND W. STARR, Attorney General, in the name of and on behalf of The People of the State of Michigan,

Petitioner,

vs.

B. C. SCHRAM, Receiver of the First National Bank—Detroit, a National Banking Association.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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Chief Assistant Attorney General,
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INDEX.

Subject Index.

	Page
Petition for writs of certiorari	1
Summary statement	1
Reasons relied upon for allowance of writs	5
Prayer for writs	6
Brief in support of petition for writs of certiorari	9
Opinion of court below	9
Jurisdiction	10
Statement of the case	11
Specification of errors	11
Argument	12
Summary	12
A. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and the applicability to the case at bar is in conflict with the decision of the Circuit Court of Appeals of the Ninth Circuit, in a like matter	13
B. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes to escheat and their applicability to the case at bar is in conflict with the applicable local decisions	13
C. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is a decision of a Federal question probably in conflict with the decisions of this Court	14

Page

D. The decision of said Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat by holding them not applicable, so far departs from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision. 15

E. The decision of the Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, holding them to be more akin to forfeiture than conservator statutes, involves an important question of Federal law as respects the comparative and concurrent fields of the operation and liquidation of national banks under the National Banking Act and the State laws relating to the descent of property and escheat, which should be settled by this Court..... 16

F. The importance of the questions involved, compassing as they do the entire field of the liquidation of national banks during the past eight years, and still in progress in practically every State in the union; that appellant's action is a petition for a declaratory judgment, asking the aid of the court for an interpretation and construction of the law governing escheated and escheatable estates in Michigan; the need of an authoritative and elucidating decision before this liquidation is completed; the conflicting interests of the Federal and the State authorities with respect to the liquidation of national banks in nearly every State

Page

in the union; the sovereign right of the State in great amounts of money; and that the public interest will be promoted by a prompt settlement by the Court of the questions involved 17

Conclusion 18

CITATIONS.

Cases:

Alaska v. *First National Bank of Fairbanks*, 22 F. (2d) 377 (C. C. A. 9) 5, 13

Alaska v. *First National Bank of Fairbanks*, 41 F. (2d) 186 (C. C. A. 9) 5, 13

Beckwith v. *Bates*, 228 Michigan 400 15

Braun v. *McPherson*, 277 Michigan 396 ..... 13, 15, 16

Cope v. *Cope*, 137 U. S. 682, 34 L. Ed. 832 15

Erie Railroad Company v. *Tomkins*, 304 U. S. 64 15

Lafayette Transfer & Storage Co. v. *Public Utilities Commission*, 287 Michigan 488 15

National City Bank of New York v. *The People of the Philippine Islands*, 302 U. S. 651 10

Ruhlin v. *New York Life Insurance Co.*, 304 U. S. 202 15

The First National Bank of San Jose v. *California*, 262 U. S. 366 ..... 4, 10, 12, 16

Statutes:

Act No. 238, Public Acts of Michigan, 1897, being Sections No. 13455 to 13477, Compiled Laws of Michigan for year 1929, inclusive 3, 11, 13, 17

Act No. 40, Public Acts of Michigan for 1933 ..... 2, 4

Act No. 45, Public Acts of Michigan for 1933 ..... 2, 4

Act No. 171, Public Acts of Michigan for 1933 ..... 2, 4

Act No. 170, Public Acts of Michigan for 1941 4

Act No. 205, Public Acts of Michigan, 1925, being Sections 15624 to 15652, inclusive, Compiled Laws of Michigan for year 1929 4

Page

Section 240 of the Judicial Code of 1911, as amended by Act of February 13, 1925, United States Code Annotated Title 28, Sec. 347 10

Textbook:

Cooley's Constitutional Limitations, 8th Edition, Volume 2, Chapter XI, page 789 18

APPENDIX.

(Cross-reference to pages of printed record.)

Constitution of Michigan of 1908, Article VI 61
Michigan Compiled Laws of 1929, Section 5852 62-63
Constitution of Michigan of 1908, Article II 63
Michigan Compiled Laws of 1929, Section 13440 64-66
Act No. 238, Public Acts of Michigan, 1897, being Sections 13454 to 13477, inclusive, Compiled Laws of Michigan for year 1929 67-80
Act No. 40, Public Acts of Michigan for 1933 80-82
Act No. 45, Public Acts of Michigan for 1933 83-85
Act No. 171, Public Acts of Michigan for 1933 86-89
Act No. 170, Public Acts of Michigan for 1941 202-218
Michigan Compiled Laws of 1929, Section 15611 89-90
Michigan Compiled Laws of 1929, Section 15726 138-141
Act No. 205, Public Acts of Michigan, 1925, being Sections 15624 to 15652, inclusive, Compiled Laws of Michigan for year 1929 142-155

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RAYMOND W. STARR, ATTORNEY GENERAL, IN THE NAME OF AND ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

B. C. SCHRAM, RECEIVER OF THE FIRST NATIONAL BANK—DETROIT, A NATIONAL BANKING ASSOCIATION,

Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Hon. Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Summary Statement.

Your petitioner respectfully shows:

That he is the Attorney General of the State of Michigan, a successor to Raymond W. Starr, Attorney General.

That this action was commenced by the filing of a petition for declaratory judgment and other relief in the District Court of the United States for the Eastern District of Michigan, Southern Division, on February 14, 1938, by Raymond W. Starr, the then Attorney General of Michigan, directed against the Hon. J. F. T. O'Connor, the then Comptroller of the Currency of the United States of America, and B. C. Schram, Receiver of the First National Bank—Detroit, a national banking association then and now in process of liquidation, as defendants. That said petition stated, among other things, that on the date of the suspension of said bank, on February 11, 1933, there were approximately 125,106 individual deposit balances, totalling $2,038,-271.48, which appeared as liabilities upon the books of said bank on the date of its suspension, upon which no claims had been presented, or upon which balances no demands had been made for payment by the persons who were entitled to make claim for said deposits, prior to the filing of said petition; that petitioner believed that said depositors had had no dealings with the depository within seven years from the date of the last deposit or withdrawal by each of them made, and that there was good reason to believe that such persons were dead, and that their estates (being the unclaimed and dormant bank deposits) should escheat to the State of Michigan under the laws of escheat thereof, and especially Act No. 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, and especially as amended by Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for 1933; and praying that the Court take jurisdiction of the matter and declare that Act No. 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, being Sections 13454 to 13477 both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for 1933,

are applicable to First National Bank—Detroit, a national banking association, insolvent and in process of liquidation, and for such further relief in the premises as to the Court might seem adequate and just. (See R. 3.)

That on March 11, 1938, the case was dismissed as to the Comptroller of the Currency (R. 22).

It was plaintiff's position that the Michigan escheat statutes, viz., Act 238 of the Public Acts of Michigan for 1897, as amended, and the amendments made by Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for 1933 are valid and applicable to national banks in Michigan, solvent and insolvent, and that they provided a specific direction by the Legislature of Michigan under which to proceed. This defendant denied. It was defendant's position that the seven year period of inactivity prescribed by the Michigan escheat statutes must, in any event, antedate the suspension of the bank. This plaintiff denied. It was defendant's position that the accounts other than ordinary accounts are not escheatable. This plaintiff denied.

The case was heard upon stipulation of facts (R. 45) before the Hon. Arthur F. Lederle, District Judge, and his opinion, filed July 6, 1938, (R. 117) and reported in 24 Fed. Supp. 888, held the said Michigan escheat statutes applicable, that the seven year period was tolled as of the suspension of the bank, and further that none but the ordinary accounts were escheatable.

Appeal was taken to the Circuit Court of Appeals of the Sixth Circuit, the case heard, and the opinion of said Court, filed March 14, 1941 (R. 157), reported in 118 F. (2d) 548, held the State of Michigan escheat acts not applicable; that Act No. 205 of the Public Acts of Michigan for 1925 was the sole source of authority in Michigan under which to administer the estates of missing persons and persons presumed

to be dead, for the purposes of escheat; that the seven year period of inactivity was tolled by the fact and at the time of the suspension of the banks; that the Michigan statutes of escheat were more nearly akin to forfeiture than conservator statutes; and that the instant case was governed by the case of *The First National Bank of San Jose* v. *California,* 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030.

Following said opinion, a petition for rehearing was filed (R. 172).

That subsequent to the rendition of the opinion of the Circuit Court of Appeals and the filing of a petition and brief for rehearing, and prior to the denial of said motion for rehearing, the Sixty-first Legislature, Regular Session of 1941, of the State of Michigan, passed an act which was approved by the Governor of said State and given immediate effect, now known as Act No. 170 of the Public Acts of Michigan for the year 1941, and which is amendatory of Act No. 238 of the Public Acts of Michigan for the year 1897 and the amendments thereto, and particularly Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for the year 1933. That said amendatory act, so far as it is pertinent to the issues raised in said case, is almost exclusively remedial; that it does not change the fundamental framework with reference to the handling of escheated and escheatable estates in Michigan, nor does it affect or alter in anywise the position of the Circuit Court of Appeals that the State of Michigan used the wrong procedure, and should have proceeded under Act No. 205 of the Public Acts of Michigan for 1925, which was the basis of the Court's opinion. A motion to advise the Court of such new legislation, together with a copy of said new amendment, was filed with the United States Circuit Court of Appeals for the Sixth Circuit on October 1, 1941 (R. 194).

Rehearing of petition by appellant was denied without opinion on October 16, 1941 (R. 217), and stay of mandate was granted pending the filing of this petition.

Reasons Relied Upon for the Allowance of the Writs.

A. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and the applicability to the case at bar is in conflict with the decision of the Circuit Court of Appeals of the Ninth Circuit, in a like matter, in the case of:

Alaska v. *First National Bank of Fairbanks*, 22 F. (2d) 377,

Alaska v. *First National Bank of Fairbanks*, 41 F. (2d) 186.

B. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is in conflict with applicable local decisions.

C. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is a decision of a Federal question probably in conflict with the decisions of this Court.

D. The decision of said Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, by holding them not applicable, so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

E. The decision of the Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, holding them to be more akin to forfeiture than conservator stat-

utes, involves an important question of Federal law as respects the comparative and concurrent fields of the operation and liquidation of national banks under the National Banking Act and the State laws relating to the descent of property and escheat, which should be settled by this Court.

F. The importance of the questions involved, compassing as they do the entire field of the liquidation of national banks during the past eight years, and still in progress in practically every State in the union; that appellant's action is a petition for a declaratory judgment, asking the aid of the Court for an interpretation and construction of the law governing escheated and escheatable estates in Michigan; the need of an authoritative and elucidating decision before this liquidation is completed; the conflicting interests of the Federal and the State authorities with respect to the liquidation of national banks in nearly every State in the union; the sovereign right of the State in great amounts of money; and that the public interest will be promoted by a prompt settlement by the Court of the questions involved.

Wherefore, Your petitioner prays that writs of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the Record and of the proceedings of the said Circuit Court of Appeals had in the cases numbered and entitled in the docket as Nos. 8461 and 8462, Raymond W. Starr, Attorney General, in the name and in behalf of the People of the State of Michigan, appellant and cross-appellee, vs. J. F. T. O'Connor, Comptroller of the Currency of the United States of America, and B. C. Schram, Receiver of the First National Bank—Detroit, a National Banking Association, appellee and cross-appellant, to the end that this case may be reviewed and determined by this

Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court; and for such further relief as to this Court may seem proper.

Dated October 29, 1941.

HERBERT J. RUSHTON,
Attorney General for the State of Michigan;
JAMES F. SHEPHERD,
Chief Assistant Attorney General for the State of Michigan;
MERLIN WILEY,
Of Counsel.